

# Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia

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# 2015 Legislative Directive

## Va. Code § 22.1-279.1:1

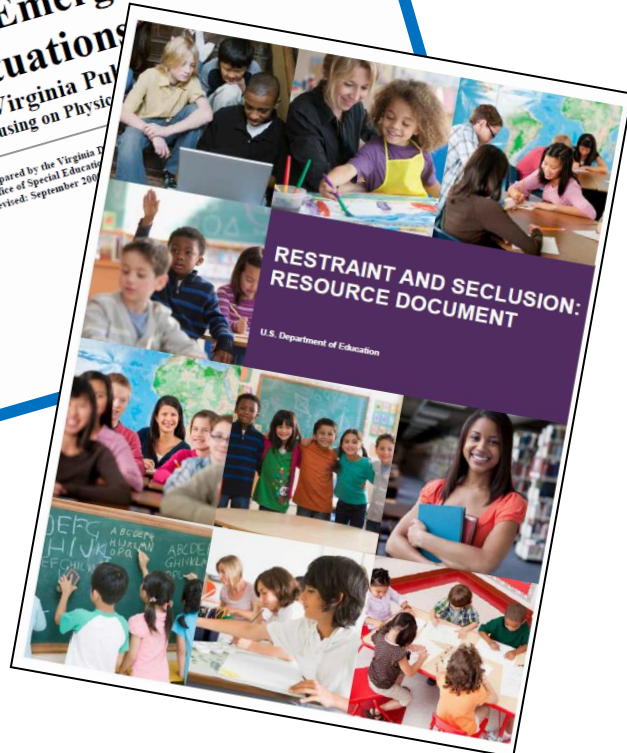
- Virginia Board of Education to adopt regulations consistent with:
  - VDOE's 2009 *Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations*
  - **Fifteen Principles**
    - US ED's 2012 *Restraint and Seclusion: Resource Document*

Guidelines for the  
Development of  
Policies and Procedures  
for

### Managing Student Behaviors In Emergency Situations

in Virginia Public  
Schools  
Focusing on Physical  
Restraint and Seclusion

Prepared by the Virginia  
Department of Education  
Office of Special Education  
Revised: September 2009



# 2015 Legislative Directive

## Va. Code § 22.1-279.1:1

- **Regulations must include:**
  - Definitions
  - Criteria and restrictions for use
  - Requirements
    - Training
    - Notification
    - Reporting
    - Follow-up

# 2015 Legislative Directive

## Va. Code § 22.1-279.1:1

- **Regulations must address distinctions—such as emotional and physical development—between:**
  - General and special education student populations
  - Elementary and secondary school students

# Overview: The Regulations...

- **Permit, but do not require, school divisions to implement physical restraint and seclusion in public schools**
  - School divisions electing to use physical restraint and seclusion must follow regulations
- **Prohibit use of physical restraint and seclusion as:**
  - Punishment or discipline;
  - Means of coercion or retaliation; or
  - Convenience

# Overview: The Regulations...

- **Preclude use of:**
  - Seclusion cells
  - Aversive stimuli
  - Prone restraints
  - Pharmacological restraints
  - Mechanical restraints
- **Establish specifications for seclusion rooms**
  - Based on Department of Behavioral Health and Developmental Services' Regulations for Children's Residential Facilities
- **Provide for continuous visual monitoring of seclusion**

# Overview: The Regulations...

- **Require:**

- **Initial** evidence-based training in physical restraint and seclusion for all school personnel
- **Advanced** evidence-based training for school personnel assigned to self-contained classroom when physical restraint and seclusion are used in a self-contained classroom or other special education setting

# Overview: The Regulations...

- **Require**, when physical restraint and seclusion are used in a self-contained classroom or other special education setting:
  - Incident reporting to principals, division superintendents, and Superintendent of Public Instruction
  - Copies of incident reports to parents



## *8 VAC 20-750-5. Application.*

- “These regulations are applicable to all students and school personnel in the public elementary and secondary schools of the Commonwealth of Virginia.”



## *8 VAC 20-750-10. Definitions.*

- **“Student” means any student, with or without disability, enrolled in public school, including those:**
  - attending public school on less-than-full time basis;
  - receiving homebound instruction pursuant, without regard to special education status;
  - receiving home-based instruction; and
  - enrolled in pre-school program operated by school division or receiving services from school division personnel
- **“Student” does NOT include those meeting compulsory attendance requirements by:**
  - enrollment in private, denominational, or parochial schools;
  - receipt of instruction by tutor or teacher; or
  - receipt of home instruction

## *8 VAC 20-750-10. Definitions.*

- **“Physical restraint” means personal restriction that immobilizes or reduces ability of student to move freely**
- **Term does NOT include:**
  - briefly holding student to calm or comfort student;
  - holding student’s hand or arm to escort student safely from one area to another; or
  - use of incidental, minor, or reasonable physical contact or other actions designed to maintain order and control

# 8 VAC 20-750-10. Definitions.

- **“Seclusion” means involuntary confinement of student alone in room or area from which student is physically prevented from leaving until student no longer:**
  - presents immediate danger to self or others or
  - poses immediate threat of damage to property
- **Term does NOT include:**
  - time out;
  - in-school suspension;
  - detention;
  - student-requested breaks in different location in room or in separate room;
  - removal of student for short period of time from room or separate area of room to provide student with opportunity to regain self-control
    - so long as student is not physically prevented from leaving
    - exception: during investigation and questioning by school employees regarding student’s knowledge of or participation in events constituting violation of student conduct code;
  - removal from classroom by teacher for disruptive behavior (§ 22.1-276.2)

## 8 VAC 20-750-50.

### *Notification and reporting.*

- By end of same school day, school staff must report incident and first aid to school principal/designee
- Within **one** calendar day, school personnel or volunteers must make reasonable effort to ensure direct contact with parent regarding incident and any related first aid
  - In person or through telephone conversation
- If physically restrained or secluded outside regular school day, notification made as soon as practicable pursuant to school division's school crisis/emergency management plan

## *8 VAC 20-750-70. Prevention; multiple uses of restraint or seclusion.*

- Follow-up/review after 3 incidents of physical restraint or seclusion for students in special or general education
  - IEP/Section 504 team or school team:
    - Considers need for FBA and new/revised BIP addressing underlying causes or purposes of behaviors



## *8 VAC 20-750-60.*

### *Policies and procedures.*

- **If school division elects to use restraint or seclusion, develop:**
  - Written policies/procedures that meet or exceed regulations
- **Provisions include:**
  - Examples of positive behavioral interventions and support strategies
  - Documentation and notification
  - Training

# 8 VAC 20-750-30.

## *Use of physical restraint and seclusion.*

### **Permitted to:**

- Prevent student from inflicting **serious physical harm** or injury to self or others;
- Quell disturbance that threatens **serious physical harm** or injury to persons or **damage to property**;
- Remove student from scene of disturbance that threatens **physical injury** to persons or **damage to property**;
- Defend self or others;
- Obtain possession of **drugs/paraphernalia** upon student or within student's control; or
- Obtain possession of **weapons or other dangerous objects** upon student or within student's control



## *8 VAC 20-750-30.*

### *Use of physical restraint and seclusion.*

- Restraint and seclusion must discontinue as soon as conduct prompting use has ceased or been resolved
- No requirement for school personnel to attempt less restrictive intervention first in emergency when, in reasonable judgment of school personnel, less restrictive intervention would be ineffective

# *8 VAC 20-750-100.*

## *Construction and interpretation.*

- **Regulations cannot be construed to modify or restrict:**
  - Initial authority of teachers to remove students from classroom
    - Va. Code § 22.1-276.2
  - Authority and duties of SROs and SSOs
    - Va. Code § 9.1-101
  - Civil immunity for teacher's acts or omissions resulting from supervision, care, or discipline of students
    - Within scope of employment
    - In good faith in course of supervision, care, or discipline
    - Unless gross negligence or willful misconduct
      - Va. Code § 8.01-220.1:2

# *Areas of Disagreement*

- **US ED's *Principle 3*:**
  - “physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others”
- **US ED's *15 Principles* do not address use of restraint or “reasonable force” regarding:**
  - damage to property
  - obtaining drugs/weapons
- **Va. Code § 22.1-279.1—prohibits corporal punishment BUT does not preclude use of reasonable force to:**
  - quell disturbance that threatens serious physical harm or injury to persons **or damage to property**;
  - remove student from scene of disturbance that threatens serious physical injury to persons **or damage to property**;
  - defend self or others;
  - obtain possession of **drugs** upon student or within student’s control;
  - obtain possession of **weapons** or other dangerous objects upon student or within student’s control

# *Areas of Disagreement*

- **Training**

- *15 Principles* clearly contemplate regular staff training in proper use of restraint and seclusion
  - Should all or some staff have extensive training to intervene in common situations, such as student altercations?

- **Notification requirements**

- Parent, school, division, and state levels
- Timing and need
  - No timeline for some current crime/violence reporting

# *Areas of Disagreement*

- **Debriefing with student and staff**
  - Timing
  - Scope
  - Nature



# 15 Principles

1. Every effort should be made to **prevent** the need for the use of restraint and for the use of seclusion.
2. Schools should never use **mechanical restraints** to restrict a child's freedom of movement, and schools should never use a **drug or medication** to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).
3. Physical restraint or seclusion should not be used except in situations where the child's behavior poses **imminent danger of serious physical harm to self** or others and **other interventions are ineffective** and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.
4. Policies restricting the use of restraint and seclusion should apply to **all children, not just children with disabilities**.

# 15 Principles

5. Any behavioral intervention must be consistent with the child's rights to be **treated with dignity** and to be free from abuse.
6. Restraint or seclusion should **never be used as punishment or discipline** (e.g., placing in seclusion for out-of-seat behavior), as a means of **coercion or retaliation**, or as a **convenience**.
7. Restraint or seclusion should never be used in a manner that **restricts a child's breathing or harms** the child.
8. The use of restraint or seclusion, particularly when there is repeated use for an individual child, **multiple uses** within the same classroom, or multiple uses by the same individual, **should trigger a review** and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.

# 15 Principles

9. Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the **underlying cause or purpose** of the dangerous behavior.
10. Teachers and other personnel should be **trained regularly** on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.
11. Every instance in which restraint or seclusion is used should be carefully and **continuously and visually monitored** to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.



# 15 Principles

12. Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable Federal, State, or local laws.
13. Parents **should be notified as soon as possible** following each instance in which restraint or seclusion is used with their child.
14. Policies regarding the use of restraint and seclusion should be **reviewed regularly and updated** as appropriate.
15. Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be **documented in writing** and provide for the **collection of specific data** that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

# Resource Links

GAO report/Testimony Before the Committee on Education and Labor, House of Representatives, *SECLUSIONS AND RESTRAINTS: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*

(May 2009)

<http://www.gao.gov/new.items/d09719t.pdf>

Virginia Department of Education, *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors In Emergency Situations in Virginia Public Schools Focusing on Physical Restraint and Seclusion*

(September 2009)

[http://www.doe.virginia.gov/support/student\\_conduct/guidelines\\_managing\\_behaviors\\_emergency.pdf](http://www.doe.virginia.gov/support/student_conduct/guidelines_managing_behaviors_emergency.pdf)

U.S. Department of Education, *Restraint and Seclusion Resource Document*

(May 2012)

<http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

Virginia Commission on Youth: *Study of Seclusion and Restraint in Schools*

(House Document No. 2, 2015)

[http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD22015/\\$file/HD2.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD22015/$file/HD2.pdf)